

[REDACTED]

Date: MAY 26 1989

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were formed on [REDACTED] in [REDACTED].

The purposes stated in your Articles of Association are "to provide educational & charitable services through the encouragement and promotion of the arts, particularly the visual arts, but also the literary, musical, and performing arts.

The information submitted with your 1023 application indicates that your primary activity consists of the operation of a cooperative art gallery whereby artists works are exhibited. Each member puts on their own show and sells their works which serves the private interest of those artists whose works are displayed for sale. Your income is derived from initiation fees and monthly dues.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Revenue Rule 71-395, 1971-2 C.B. 228 holds that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting their works does not qualify for exemption under section 501(c)(3) of the Code. The revenue ruling concluded that the organization's primary activity of selling artists' works served the private interests of those artists whose works are on display for sale.

Like the organization described in Revenue Rule 71-395, the selling of the artworks by your organization serves the private interest of those artists whose works are displayed for sale, even though the exhibition and sale of artworks may be an educational activity in other respects. Therefore, we have determined that you are not operated exclusively for education or other exempt purposes stated in section 501(c)(3) of the Code.

Revenue Ruling 76-152, 1976-1 C.B. 152, discusses a situation where a nonprofit organization selects for exhibits, and sells the art work of local artists. As Revenue Ruling 71-395 denies exemption to an organization that promotes sale of its members' work and advances their careers, Revenue Ruling 76-152 also denies exemption to an organization because the artists in the subject case are being directly benefitted by the exhibition and sale of their works. A major activity of the organization is serving the private interests of those artists whose works are displayed for sale. Thus, the organization is not operated exclusively for educational purposes and this does not qualify for exemption from Federal income tax under Section 501(c)(3) of the Code.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3), of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of United States for District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

A solid black rectangular box used to redact the signature of the District Director.

District Director